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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,412	09/08/2003	Christopher L. Darling	MS1-1518US	9946
22801	7590	11/25/2008	EXAMINER	
LEE & HAYES PLLC 601 W Riverside Avenue Suite 1400 SPOKANE, WA 99201			HSU, ALPUS	
			ART UNIT	PAPER NUMBER
			2419	
			MAIL DATE	DELIVERY MODE
			11/25/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/657,412	<b>Applicant(s)</b> DARLING ET AL.	
	<b>Examiner</b> Alpus H. Hsu	<b>Art Unit</b> 2419	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 12-14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8 is/are allowed.
- 6) ☒ Claim(s) 9, 12-14, 16-18 and 20 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/16/08, 8/22/08, 9/9/08</u> .                                | 6) <input type="checkbox"/> Other: _____                          |

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1. The information disclosure statement filed August 22, 2008 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because some **NPL documents** failed to provide valid **dates of publication**. It has been placed in the application file, but the information referred to these NPL documents has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

2. The indicated allowability of claims 9, 12-14, 16-20 as suggested by the examiner in the telephone interview conducted on September 9, 2008 is withdrawn in view of the newly discovered reference(s) to HALPERN et al. Rejections based on the newly cited reference(s) follow.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 9, 12-14, 16-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over SO (of record) in view of HALPERN et al. in U.S. Patent No. 6,438,100 B1 (newly cited), hereinafter referred to as HALPERN.

Referring to claim 9, SO discloses a system for highly available network load balancing infrastructure, comprising: a plurality of different means (401, 520, 530, 540, 550) for load balancing network traffic; detection means (405) for detecting a failure of one or more of the plurality of different means for load balancing; handling means (405) for handling the failure; and recovery means (405) for recovering from the failure (see col. 9, line 64 to col. 10, line 59, col. 12, line 19 to col. 13, line 6, col. 14, line 41 to col. 15, line 6, col. 15, line 28 to col. 16, line 2, col. 18, line 40 to col. 19, line 7).

SO differs from the claim, in that, it does not disclose the feature of providing the classifier means is separate from the forwarder means, which is well known in the art and commonly used in communications field for enhancing the flexibility, scalability and manageability.

HALPERN, for example, from the similar field of endeavor, teaches the feature of providing the classifier means separate from the forwarder means for enhancing the flexibility, scalability and manageability (see col. 5, lines 17-33), which can be easily adopted by one of ordinary skill in the art into the system of SO to further improve the system efficiency.

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Referring to claim 12, SO discloses that the plurality of different means for load balancing includes at least one request router means (401) that is capable of routing logical requests on request level.

Referring to claim 13, SO discloses that the plurality of different means for load balancing includes at least one session tracker means (520 & 540) that tracks sessions for at least one of the forwarding component and the classifying component.

Referring to claim 14, SO discloses that the plurality of different means for load balancing includes at least one health and load handler means (550) that is capable of handling health and load information.

Referring to claim 16, the feature of the system comprises one or more processor-accessible media would have been obvious to one of ordinary skill in the art since software implementation for hardware structure is considered to be inherent and conventional wisdom.

Referring to claims 17, 18 and 20, SO discloses a network load balancing system comprising: a first device (304) that includes forwarding functionality (403); and a second device (410) that includes classifying functionality (530), the classifying functionality performing classifying for the forwarding functionality, wherein once a packet has been classified subsequent packets in that connection are forwarded without further classification (see col. 10, lines 17-43, col. 14, lines 56-63, col. 18, line 40 to col. 19, line 7).

SO differs from the claims, in that, it does not disclose the feature of providing the hardware of the first device differs from hardware of the second device, which is well known in the art and commonly used in communications field for enhancing the flexibility, scalability and manageability.

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HALPERN, for example, from the similar field of endeavor, teaches the feature of providing the first device hardware (classifier means) separate from the second device hardware (forwarder means) for enhancing the flexibility, scalability and manageability (see col. 5, lines 17-33), which can be easily adopted by one of ordinary skill in the art into the system of SO to further improve the system efficiency.

6. Claims 1-8 are allowed.

7. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Goyal et al., Anerousis et al. and Hagen are additionally cited to show the feature of separating functional components within a processor for enhancing scalability similar to the claimed invention.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alpus H. Hsu whose telephone number is (571)272-3146. The examiner can normally be reached on M-F (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on (571)272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AHH

/Alpus H. Hsu/  
Primary Examiner, Art Unit 2419